

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Monday, November 1, 1999

DIVISION TWO

A086473 -- Darryl C., v. Superior Court of Solano County; Solano County Department of Health & Social Services; R.P.I.

By The Court: Petitioner having withdrawn his writ petition on May 11, 1999, the order to show cause issued on April 23, 1999, is discharged and the petition is dismissed as moot. Kline, P.J.

A082707 -- The People v. James Murdaugh.

The judgment is affirmed. Kline, P.J. We concur: Haerle, J., Lambden, J. (Not for Publication.)

A088811 -- In re Richard Cross, on Habeas Corpus.

By The Court: The petition for writ of habeas corpus is denied. Kline, P.J.

A088829 -- Theodore Streater v. Superior Court of Solano County; The People of the State of California, R.P.I.

By The Court: The petition for writ of mandate is denied. Kline, P.J.

A083498 -- Judith M. Hardiman v. The Retirement Board of the San Francisco City and County Employees' Retirement System.

The judgment is affirmed. Each party to bear its own costs. Kline, P.J. We concur: Haerle, J., Ruvolo, J. (Not for Publication.)

Monday, November 1, 1999 (continued)

DIVISION FOUR

A081134 -- The People v. Leo A. Somersall.

A086816 -- In Re Leo A. Somersall on Habeas Corpus.

By The Court: The petition of appellant/petitioner Leo A. Somersall for rehearing is denied. Poché, Acting P.J.

DIVISION FIVE

A085905 -- The People v. Gavin T.

The order of the juvenile court is affirmed. Stevens, J. We concur: Jones, P.J., Haning, J. (Not for Publication.)

A086605 -- Jawj E. D. Greenwald v. Airtouch Communications, Inc.

The judgment of dismissal is affirmed. Stevens, J. We concur: Jones, P.J., Haning, J. (Not for Publication.)

A084799 -- The People v. Lonnie Cobbs Jr.

The judgment is affirmed. Jones, P.J. We concur: Haning, J., Stevens, J. (Not for Publication.)

A085887 -- In re Ashley V. et al., a Person Coming Under the Juvenile Court Law.

The order denying de facto parent status is affirmed. Jones, P.J. We concur: Haning, J., Stevens, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION ONE

Monday, November 1, 1999

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Strankman, P.J., Swager, J., and Marchiano, J.; N. Millner, Deputy Clerk; and CHP Officer S. Aldridge, Bailiff.

A083979 The People,
 v.
 Steven Wayne Young.
Cause called and argued by Kenneth D. Noel, via teleconference, counsel for appellant, and Violet M. Lee, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A084526/ R & E Construction Company, Inc.,
A085226 v.
 Johnson Western Gunitite Company, et al..
Cause called and argued by Diane D. Papan, counsel for appellants, and Pamela A. Lewis, counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Presiding Justice Strankman left the bench. Justice Stein joined the bench and presided over the remainder of the calendar.

A085928 Jeanette Garcia, et al.
 v.
 American Home Foods, Inc.
Cause called and argued by Arnold J. Wolf, counsel for appellants, and Julie A. Noble, counsel for respondent. Cause ordered submitted.

A081489 The People,
 v.
 Marvel Simmons, et al.
Cause called and continued to this Court's December calendar.

Court recessed until 1:30 p.m.

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION ONE

Monday, November 1, 1999

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Strankman, P.J., Stein, J., and Swager, J.; B. Robbins, Deputy Clerk; and CHP Officer S. Aldridge, Bailiff.

A085388 In re Shawndale H.
 Social Services Agency,
 v.
 Linda B.
Cause called and argued by Senya R. Means, counsel for appellant, and Jaqueline Woods, Deputy County Counsel, counsel for respondent. Cause ordered submitted.

A081474 James C. Bateman Petroleum Services, Inc.,
 v.
 Wall Street Properties, et al.
Cause called and argued by Joan Wolff, counsel for appellants, and Michael Abbott, counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Justice Swager left the bench and Justice Marchiano joined the bench for the remainder of the calendar.

A083930 The People,
 v.
 Rataja Chester Pinola.
Cause called and argued by E. Evan Young, counsel for appellant, and Catherine A. Rivlin, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A084873 Richard Parker,
 v.
 Pittsburgh Corning Corporation.
Cause called and argued by Claudia Martin, counsel for appellant, and John P. Katerndahl, counsel for respondent. Cause ordered submitted.

A085028 Richard Hagendorf,

v.

Louis Flock, et al.

Cause called and argued by Wayne A. Hagendorf, counsel for appellant,
and Christina L. Rooke, counsel for respondents. Cause ordered submitted.

Court recessed until Tuesday, November 2, 1999 at 9:00 a.m.

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

DIVISION ONE

Tuesday, November 2, 1999

A085420 -- The People v. Henry Houston Ganther.

Accordingly, the judgment is affirmed. Swager, J. We concur: Strankman, P.J., Marchiano, J. (Not for Publication.)

A084384 -- In re Nicholas T., a Person Coming Under the Juvenile Court Law.

The judgment is affirmed. Swager, J. We concur: Strankman, P.J., Marchiano, J. (Not for Publication.)

A086184 -- In re Matthew K., a Person Coming Under the Juvenile Court Law.

The order declaring the minor a ward of the court and committing him to the probation officer for out-of home placement is affirmed. Swager, J. We concur: Stein, Acting P.J., Marchiano, J. (Not for Publication.)

A086572 -- The People v. Eldaniel Joe Holland.

The judgment is affirmed. Marchiano, J. We concur: Strankman, P.J., Swager, J. (Not for Publication.)

DIVISION TWO

A086126 -- The People v. Robert Eugene Wilson, Jr.

The judgment is affirmed. Kline, P.J. We concur: Lambden, J., Ruvolo, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION ONE

Tuesday, November 2, 1999

The Court reconvened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Strankman, P.J., Swager, J, and Marchiano, J.; N. Millner, Deputy Clerk; and CHP Officer T. Tam, Bailiff.

A088055 Richard Diodati
 v.
 Superior Court of the County of San Mateo;
 San Carlos Industrial Park Building One Owners Association, et al.
 Cause called and argued by Matthew Conant, counsel for petitioner, and
 Robert Hendrickson, counsel for real party in interest. Cause ordered
 submitted.

Court adjourned.

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Wednesday, November 3, 1999

DIVISION TWO

A088883 -- Denise Lynette Stevenson v. The Superior Court of Alameda County; County of Alameda, et al., R.P.I.

By The Court: The petition for writ of mandate is denied. Kline, P.J.

A088882 -- Monique Daniel Miles v. Superior Court of Alameda County; County of Alameda, et al., R.P.I.

By The Court: The petition for writ of mandate/prohibition is denied. Kline, P.J.

A084737 -- Maureen Kallins v. Julian Bentel et al.

The judgment is reversed and the case is remanded for further proceedings consistent with this opinion. Appellant is entitled to costs on appeal. Kline, P.J. We concur: Haerle, J, Lambden, J. (Not for Publication.)

DIVISION FOUR

A084120 -- The People v. Jacob Willie Walters.

The order of commitment is affirmed. Reardon, J. I concur: Hanlon, P.J. See dissenting opinion of Poché, J. (Not for Publication.)

A081330 -- Al Deschene v. Pinole Point Steele Company.

We reverse the judgment of dismissal as to plaintiff's claims of wrongful termination in violation of public policy and of discrimination on the basis of health. In all other respects the judgment is affirmed. Poché, J. We concur: Hanlon, P.J., Sepulveda, J. (Certified for Publication.)

Wednesday, November 3, 1999 (continued)

DIVISION FIVE

A085931 -- David Earl Pope v. Rodney Mitchell et al.

The trial court's orders sustaining demurrers to appellant's third amended complaint are construed to contain a judgment of dismissal. As so construed, the judgment of dismissal is affirmed. Stevens, J. We concur: Jones, P.J., Haning, J. (Not for Publication.)

A084996 -- Leon King v. The Regents of the University of California et al.

The judgment is affirmed. Stevens, J. Jones, P.J., Haning, J. (Not for Publication.)

A085800 -- Maarten Kalway v. Carroll B. Williams.

The judgment is affirmed. Stevens, J. We concur: Jones, P.J., Haning, J. (Not for Publication.)

A073726 -- Patrick Barkhord, et al., v. Cooley, Godward, Castro, Huddleson & Tatum, et al.

The judgment is affirmed. Jones, P.J. We concur: Haning, J., Stevens, J. (Not for Publication.)

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Wednesday, November 3, 1999

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California.

Present: McGuiness, P.J., Parrilli, J., Walker, J. and I. Calanoc, Deputy Clerk.

A083689 Michelle Engel, et al.,

v.

Pacific Gas & Electric Company.

Justice McGuiness announced the panel and informed both counsel of Justice Corrigan's absence. Counsel both waived Justice Corrigan's personal presence. Cause called and argued by Robert DeVries, counsel for appellants, and Steve Burke, counsel for respondent. Cause ordered submitted.

A085465 David Shore,

v.

Fenty Kaliman, et al.

Cause called and argued by David Shore, appellant, in pro per, and James Braden, counsel for respondents. Oral argument by appellant was via teleconference. Cause ordered submitted.

A085017 Osmonic, Inc., et al.

v.

Whatman, PLC, et al.

Cause called and argued by Joseph Miller, counsel for appellants, and Howard Slavitt, counsel for respondents. Cause ordered submitted. At this point, McGuiness, P.J. left the bench.

A084223 Dorothy Kafader,

v.

Pittsburgh Corning Corporation.

Justice Parrilli announced the members of the panel and inquired if both counsel were willing to waive Justice Corrigan's presence. Counsel agreed. Cause called and argued by Alan Brayton, counsel for appellant, and John Katerndahl, counsel for respondent. Cause ordered submitted.

A083348 The People,
 v.
 Daniel James Myers.
Cause called and argued by Joseph Chabat, counsel for appellant, and
Deputy Attorney General Raymond Cardozo, counsel for respondent.
Cause ordered submitted.

Court Adjourned

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Thursday, November 4, 1999

DIVISION ONE

A084919 -- Rick Paden v. Louis J. Goodman, et al.

Order Modifying Opinion and Denying Rehearing [No Change in Judgment] The Court: It is ordered that the opinion filed on October 5, 1999, be modified as follows: (SEE ORDER.): There is no change in judgment. The petition for rehearing is denied. Strankman, P.J. (Not for Publication.)

A086820 -- In re Laricha H., a Person Coming Under the Juvenile Court Law.

The judgment is affirmed. Swager, J. We concur: Strankman, P.J., Marchiano, J. (Not for Publication.)

DIVISION TWO

A085216 -- Bernard Hopkins v. Sacramento Municipal Utility District.

The judgment is affirmed. Haerle, Acting P.J. We concur: Lambden, J., Ruvolo, J. (Not for Publication.)

A083575 -- The People v. Robert Calvin Holmes.

The judgment is affirmed. Haerle, Acting P.J. We concur: Lambden, J., Ruvolo, J. (Not for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Friday, November 5, 1999

DIVISION ONE

A083930 -- The People v. Rataja Chester Pinola.

The judgment is affirmed. Strankman, P.J. We concur: Stein, J., Marchiano, J. (Not for Publication.)

A086850 -- In re Marriage of Arthur David McCauley and Mari D. McCauley.

The February 4, 1999 order is affirmed. Strankman, P.J. We concur: Stein, J., Swager, J. (Not for Publication.)

DIVISION TWO

A088945 -- Andy K. Tse v. Superior Court of San Francisco County; The People of the State of California, R.P.I.

By the Court: The petition for writ of mandate/prohibition/stay is denied. We agree with respondent superior court that there is no evidence of prejudice to the defendant because of his shackling or that the preliminary hearing was otherwise deficient or contrary to due process. However, we note that it was not established on the record that shackling was necessary at the preliminary hearing, and, further, that a sheriff's department policy of shackling in all instances in the San Francisco civil courthouse is not a substitute for a finding of necessity. (*People v. Fierro* (1991) 1 Cal.4th 173, 218-220.) Kline, P.J.

A088960 -- Andrew Contreras v. Superior Court of San Francisco County; The People of the State of California, R.P.I.

By The Court: Pending determination of the petition on file herein, and subject to further order of this court, the trial in *People v. Contreras*, in San Francisco County SCN 176334, is temporarily stayed. Kline, P.J.

Friday, November 5, 1999 (continued)

DIVISION FOUR

**A088721 -- Sergio V. Korolev v. The Superior Court of California,
County of Marin; The People, R.P.I.**

Accordingly, let a peremptory writ of mandate issue directing respondent superior court to set aside and vacate its order of October 19, 1999 denying petitioner's "motion to suspend proceedings until determination of mental competence of defendant [P.C. § 1368 *et seq.*]" and to enter a new order granting petitioner's motion. Consistent with the reasons stated in our opinion, the temporary stay issued on October 22, 1999 is hereby lifted.

Our decision is final as to this court immediately. (Cal. Rules of Court, rule 24(d).) Hanlon, P.J. I concur: Poché, J. (See Dissenting opinion of Reardon, J.) (Not for Publication.)

Courtroom Minutes
Division 4
Tuesday, November 9, 1999

Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Hanlon, P.J., Reardon J., Sepulveda, J., Jim Campbell, Deputy Clerk and CHP Officer Terry Tracy, Bailiff.

A088505 Leslie Shelton,
 respondent,
 v.
 John P. Shelton,
 appellant.

Cause called. Elizabeth Summers argued on behalf of appellant, John P. Shelton. David Morgan argued on behalf of respondent. Submission deferred.

At this time Poche, J. replaced Hanlon, P.J., on the bench.

A083599 Mose Stroughter et al.,
 appellants,
 v.
 Terrence James Russ et al.,
 respondents.

A085632 Crystal L. Grant,
 appellant,
 v.
 Terrence James Russ et al.,
 respondents.

Causes called. Ellen Lake argued on behalf of appellants, Moses Stroughter, Crystal Grant et al. Gregory Lombardi argued on behalf of respondents. Causes submitted.

Continued next page.

A085519 Raymond B. Rauen,
 appellant,
 v.
 Westlake Shopping Center, Inc.et al.,
 respondents.

Cause called. David Brown argued on behalf of appellant, Raymond B. Rauen. Eric Leitner argued on behalf of respondents. Cause Submitted.

The Court adjourned at 2:55 p.m.

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Wednesday, November 10, 1999

DIVISION ONE

A087041 -- Steven D. Trojanowski et al., v. Estate of William Trader, Jr., Deceased.

The March 17, 1999 order granting the motion to set aside the default and default judgment is affirmed. Strankman, P.J. We concur: Stein, J., Swager, J. (Not for Publication.)

A085901 -- In re Isaiah M., a Person Coming Under the Juvenile Court Law.

The appeal is dismissed. Strankman, P.J., We concur: Stein, J., Marchiano, J. (Not for Publication.)

A085828 -- The People v. Brian W. Tarver.

The judgment is reversed and the matter is remanded to the trial court to provide appellant with the opportunity to withdraw his no contest plea. Strankman, P.J. We concur: Swager, J., Marchiano, J. (Not for Publication.)

A084800 -- The People v. Jaqwayne Deson Bryant.

The judgment is affirmed. Stein, J. We concur: Strankman, P.J., Marchiano, J. (Not for Publication.)

A081646 -- The People v. Joseph Delano Walters.

The judgment appealed from is affirmed. Marchiano, J. We concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

Wednesday, November 10, 1999 (continued)

A088582 -- In re Christopher J., a Person Coming Under the Juvenile Court Law.

The challenged orders are supported by substantial evidence. (*James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1021.) The petition for extraordinary writ is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894; *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1024.)

The section 366.26 hearing is set for November 19, 1999. Therefore, our decision is final in this court immediately. Marchiano, J. We concur: Strankman, P.J., Swager, J. (Not for Publication.)

A088055 -- Richard Diodati v. Superior Court of San Mateo County; San Carlos Industrial Park Building Association et al., R.P.I.

Respondent erred when it refused to hear Diodati's motion as one for summary judgment. Therefore, we direct issuance of a peremptory writ commanding respondent Superior Court of San Mateo County to set aside its August 4, 1999 order denying Richard Diodati's motion for summary judgment, and to instead hear the motion. The stay previously imposed shall be dissolved upon issuance of the remittitur. Petitioner shall be awarded costs. Marchiano, J. We concur: Strankman, P.J., Swager, J. (Not for Publication.)

DIVISION TWO

A086872 -- The People v. Jamie Allen Gresham.

In sum, we have thoroughly reviewed the record and find no arguable issues. The judgment is affirmed. Haerle, J. We concur: Kline, P.J., Lambden, J. (Not for Publication.)

A088026 -- Harold Kepnes Ostin v. U.C.S.F.- Stanford Health Care et al.

The appeal is dismissed. Kline, P.J. We concur: Haerle, J., Ruvolo, J. (Not for Publication.)

Wednesday, November 10, 1999 (continued)

DIVISION FOUR

A084478 -- Robert Pease et al., v. John Gigounas et al.

Appellants could not establish the threshold element of duty essential to their causes of action against respondents. We affirm the judgment. Reardon, J. We concur: Hanlon, P.J., Poché, J. (Not for Publication.)

A083080 -- Mahmoud Larizadeh v. Ping Shim Leong Chin.

We affirm the judgment. Reardon, J. We concur: Hanlon, P.J., Sepulveda, J. (Not for Publication.)

DIVISION FIVE

A085048 -- The People v. Ladell Aaron Brewster.

The judgment is affirmed. Haning, J. We concur: Jones, P.J., Stevens, J. (Not for Publication.)

A085127 -- The People v. Luis Ceasar Ledesma et al.

The judgments are affirmed. Haning, J. We concur: Jones, P.J., Stevens, J. (Not for Publication.)

A085911 -- Elizabeth Taugher v. PSE/Network Distribution Systems.

The judgment is affirmed. Haning, J. We concur: Jones, P.J., Stevens, J. (Not for Publication.)

A086731 -- Insurance Commissioner of the State of California, v. Golden Eagle Insurance Company; Zurich Insurance Company.

The appeal is dismissed. GEIC's motion to strike citation and factual references contained in Zurich's opening brief is denied as moot. Jones, P.J. We concur: Haning, J., Stevens, J. (Not for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Friday, November 12, 1999

DIVISION ONE

A085752 -- In re Kody G., a Person Coming Under the Juvenile Court Law.

Accordingly, the appeal is dismissed as moot. Swager, J. We concur: Strankman, P.J., Marchiano, J. (Not for Publication.)

A081474 -- James Bateman Petroleum Services, Inc., v. Victor Catanzaro.

The judgment is affirmed. Costs are awarded to respondent. Swager, J. We concur: Strankman, P.J., Stein, J. (Not for Publication.)

A084526, A085226 -- R & E Construction Co., Inc., v. Johnson Western Gunit Co., et al.

The judgment is affirmed. The order awarding plaintiff fees and costs in the amount of \$77,537.32, is affirmed. Costs to plaintiff on appeal. Swager, J. We concur: Strankman, P.J., Marchiano, J. (Not for Publication.)

Friday, November 12, 1999 (continued)

A083979 -- The People v. Steven Wayne Young.

The erroneous denial of a timely motion for self-representation is an error of constitutional magnitude and subject to a rule of per se reversal. (*People v. Joseph, supra*, 34 Cal.3d at pp. 939, 946-948; *People v. Sohrab* (1997) 59 Cal.App.4th 89, 99; *People v. Robinson, supra*, 56 Cal.App.4th at p. 373.) “ ‘Since the right of self-representation is a right that when exercised usually increases the likelihood of a trial outcome unfavorable to the defendant, its denial is not amenable to “harmless error” analysis.’ [Citation.] ‘Any rule which purported to assess the quality of a would-be *Faretta* accused’s representation by the harmless error standard would inevitably erode the *pro se* right itself.’ [Citation.]” (*People v. Jones* (1998) 66 Cal.App.4th 760, 770.) Accordingly, we are compelled to reverse the judgment and remand the case to the trial court to conduct further proceedings not inconsistent with the views expressed herein. (*People v. Nauton, supra*, 29 Cal.App.4th at p. 981.) Swager, J. We concur: Strankman, P.J., Marchiano, J. (Not for Publication.)

A085388 -- In re Shawndale H. et al., a Person Coming Under the Juvenile Court Law.

The orders are affirmed. Strankman, P.J. We concur: Stein, J., Swager, J. (Not for Publication.)

DIVISION TWO

A083251 -- Florendo N. Ancheta, Jr., et al., v. Westborough Homeowners Improvement Association.

By The Court: The petition for rehearing is denied. Kline, P.J.

Friday, November 12, 1999 (continued)

DIVISION THREE

A085903 -- In re Rauxge M., a Person Coming Under the Juvenile Court Law.

In sum, substantial evidence supports the trial court's (implied) conclusion that appellant acted with the intent to cause sexual arousal or gratification. The judgment is affirmed. McGuiness, P.J. We concur: Corrigan, J., Parrilli, J. (Not for Publication.)

DIVISION FIVE

A085101 -- The People v. Michael George Gibber.

The judgment is affirmed. Haning, J. We concur: Jones, P.J., Stevens, J. (Not for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Monday, November 15, 1999

DIVISION ONE

A085455 -- The People v. Susan Marie Bojarski.

Finding no arguable issues, we affirm the judgment of conviction.
Strankman, P.J. We concur: Stein, J., Marchiano, J. (Not for Publication.)

DIVISION TWO

A088595 -- Valley Muffler and Exhaust, and Universal Underwriters Insurance Company v. Workers' Compensation Appeals Board and Allan Palmer.

The Court: The petition for writ of review is denied Kline, P.J.

A088768 -- Big Valley Band of Pomo Indians v. The Superior Court of Lake; Lake County Department of Social Services, R.P.I.

By the Court: The petition for writ of mandate is denied. Kline, P.J.

DIVISION THREE

A084466 -- The People v. Ronald Stacy Bunn.

We reverse the trial court's order and judgment dismissing the information.
The matter is remanded for further proceedings. Walker, J. We concur:
McGuiness, P.J., Parrilli, J. (Not for Publication.)

Monday, November 15, 1999 (continued)

DIVISION FOUR

A081873 -- The People v. Daniel Sterling.

The judgment is affirmed. Hanlon, P.J. We concur: Poché, J., Reardon, J.
(Not for Publication.)

DIVISION FIVE

**Local 21, International Federation of Professional and Technical
Engineers, AFL-CIO et al., v. City and County of San Francisco et al.**

The judgment and the order denying the motion to tax costs are affirmed.
Costs to respondents. Haning, J. We concur: Jones, P.J., Stevens, J. (Certified
for Partial Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Tuesday, November 16, 1999

DIVISION ONE

A085004 -- Paul C.P. Cheng v. California Pacific Bank.

The judgment is affirmed. Marchiano, J. We concur: Stein, Acting P.J., Swager, J. (Certified for Publication.)

DIVISION TWO

A084448 -- The People v. Miguel Virgen Macias.

The judgment is affirmed. Haerle, Acting P.J. We concur: Lambden, J., Ruvolo, J. (Not for Publication.)

A084442 -- The People v. Clifford T. Wilson.

The abstract of judgment is modified to reduce appellant's total sentence from nine years to eight years. Except as so modified, the judgment is affirmed. Haerle, J. We concur: Kline, P.J., Lambden, J. (Not for Publication.)

DIVISION THREE

A084638 -- In re Gregory A., a Person Coming Under the Juvenile Court Law.

The order of the juvenile court is affirmed. Walker, J. We concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication.)

A084223 -- Dorothy Kafader et. al, v. Pittsburgh Corning Corporation.

The judgment is affirmed. Pittsburgh shall recover its costs on appeal. Parrilli, J. We concur: Corrigan, Acting P.J., Walker, J. (Not for Publication.)

Tuesday, November 16, 1999 (continued)

A084222 -- The People v. Anthony Colan Proctor.

The judgment is affirmed. Parrilli, J. We concur: McGuiness, P.J., Walker, J. (Not for Publication.)

A081437 -- Heather Preston v. State Board of Equalization.

Order Modifying Opinion and Denying Rehearing [No Change in Judgment] By the Court It is ordered that the opinion filed on October 22, 1999, is modified as follows: (SEE ORDER) This modification does not effect a change in the judgment. Appellant's petition for rehearing is denied. McGuiness, P.J.

DIVISION FOUR

A085519 -- Raymond B. Rauen v. Westlake Shopping Center, Inc., et al.

The judgment is affirmed. Respondents shall recover their costs. Poché, Acting P.J. We concur: Reardon, J., Sepulveda, J. (Not for Publication.)

A088585 -- Tawicka H., v. The Superior Court of Alameda County; Alameda County Social Services Agency.

The petition is denied on its merits. (Welf. & Inst. Code, § 366.26, subd. (1)(1); Cal.Rules of Court, rule 39.1B(d)(2).) This opinion is final forthwith. (Cal. Rules of Court, rule 24(a).) Poché, Acting P.J. We concur: Reardon, J., Sepulveda, J. (Not for Publication.)

**A083559 -- Mose Stroughter et al., v. Terrence Russ et al.
Mose Stroughter et al., v. Vallejo City Unified School District et al.**

**A085632 -- Crystal L. Grant et al., v. Terrence Russ et al.
Crystal L. Grant et al., v. Vallejo City Unified School District et al.**

The summary judgments are affirmed. Poché, Acting P.J. Reardon, J., Sepulveda, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION TWO

Tuesday, November 16, 1999

The Court met at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Kline, P. J., Haerle, J., Ruvolo, J., and I. Santos, Deputy Clerk.

- A083918 The People,
 v.
 Frank Samuel Melonzi.
Cause called and argued by Walter K. Pyle, counsel for appellant, and Deputy Attorney General, Nanette Winaker, counsel for respondent. Cause ordered submitted.
- A083865 Ponayota Walker et al.,
 v.
 Allstate Indemnity Company et al.;
Cause called and argued by Kevin McInerney, counsel for appellants, Paul Alexander, and Kent Keller, counsel for respondents. Cause ordered submitted.
- A084567 Patsy Pinkey Phillips,
 v.
 County of Alameda et al.
Cause called and argued by Antonio Lawson, counsel for appellant, and Allison Daniels, counsel for respondents. Cause ordered submitted.
- A083763 Aeroground, Inc.,
 v.
 AMJ Associates et al.,
Cause called and argued by Kathryn Karcher, counsel for appellant, Mark O'Connor and Benjamin Ardell Johnson, counsel for respondents. Cause ordered submitted.
- A080656 Debbie Fish,
 v.
 Gerald Palmer et al.,

Cause called and argued via teleconference by Bryce Clay Anderson, counsel for appellant, and Mark O'Connor, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

Court reconvened at 1:30 p.m. Present: Kline, P. J., Haerle, J., Ruvolo, J. and I. Santos, Deputy Clerk.

- A084933 George Straggas et al.,
v.
Pittsburgh Corning Corporation.
Cause called and Claudia Martin, counsel for appellant, and John Koterndahl, counsel for respondent are present. Counsels inform the court that the case has settled. Justice Kline informs both parties that the court has spent a considerable amount of time on the case. He reminds counsels that the letter sent to them in August indicates that parties are to inform the court immediately should settlement negotiations be pursued. Counsel for appellant indicates that she will be filing a Motion to Dismiss the appeal tomorrow. Justice Kline informs the parties that the court will decide what to do about this case at a later time.
- A085730 Fisher-Friedman Associates,
v.
Griffin Realty Corporation et al.,
Cause called and argued by Robert Hendrickson, counsel for appellant, and Larry Zeman, counsel for respondent. Cause ordered submitted.
- A085271 Mario R. Juarez,
v.
Boy Scouts of America, Inc. et al.
Cause called and argued by Charles Bonner and Michael Kinane, counsel for appellants, and Nicholas Heldt and Paul Gaspari, counsel for respondents. Cause ordered submitted.
- A084806 In re Jessica K., a Person Coming Under the Juvenile Court Law.
Social Services Agency,
v.
Susan L.
Cause called and argued via teleconference by Deborah Dentler, counsel for appellant, and Tamara Wiggins, Deputy County Counsel, counsel for

respondents. Cause ordered submitted.

Court recessed until Wednesday, November 17, 1999, at 9:30 a.m.

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Wednesday, November 17, 1999

DIVISION TWO

A089034 -- Robert Boynton, et al., v. Superior Court of San Francisco County; Roy S. Gordet, R.P.I.

By the Court: The petition for writ of mandate/prohibition/stay is denied. Kline, P.J.

A088810 -- Todd Shipyards Corporation, et al., v. Superior Court of San Francisco County; William J. Vinal, R.P.I.

The petition for writ of mandate is denied. Kline, P.J.

DIVISION THREE

A083659 -- Clarence Wells v. Wilbur-Ellis Company.

The judgment is affirmed. Corrigan, J. We concur: McGuinness, P.J., Walker, J. (Not for Publication.)

A085976 -- The People v. Alexander J. Henry.

The judgment is affirmed in all particulars, except the imposition of the restitution fine which order is reversed. The matter is remanded to the Superior Court with directions to prepare and forward to the Department of Corrections a new abstract of judgment imposing a restitution fund fine of \$200. Corrigan, J. We concur: McGuinness, P.J., Parrilli, J. (Not for Publication.)

Wednesday, November 17, 1999 (continued)

DIVISION FIVE

A086262 -- Richard Park Smith v. Veterinary Medical Board, State of California.

The judgment is affirmed. Stevens, J. We concur: Jones, P.J., Haning, J.
(Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION TWO

Wednesday, November 17, 1999

The Court met at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Kline, P. J., Lambden, J., Ruvolo, J. and S. Graham, Deputy Clerk.

- A086158 Clifford Young
 v.
 Manheim a
 a
 Auctions, Inc., et al.
Cause called and argued by Montie S. Day, counsel for appellant and Susan Blitch, counsel for respondents. Cause ordered submitted.
- A079107 The People
 v.
 Michael Anthony Sims
Cause called and argued by Mark D. Greenberg, counsel for appellant and Jeremy Friedlander, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A084093 The People
 v.
 Keith Allan Hamm
Cause called and argued by Michael P. Goldstein, counsel for appellant and Ronald Niver, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A083790 Clelen D. Tanner
A085545 v.
 Board of Dental Examiners
Causes called and argued by William E. Manning, counsel for appellant and telephonically by Christiana Tiedemann, counsel for respondent. Causes ordered submitted.

- A086050 Oil Changer, Inc., et al.
v.
Herbert M. Baum
Cause called and argued by Margaret Weems, counsel lfor appellant and
Bruce Ericson, counsel for respondent. Cause ordered submitted.
- A083523 City and County of San Francisco
v.
Remberto Sainez, et al.
Cause called and argued by Jonathan Bass, counsel for appellant and
Kimon Manolius, counsel for respondent. Cause ordered submitted.
- Court recessed until 1:30 p.m.
- Court reconvened at 1:30 p.m. Present: Kline, P. J., Haerle, J., Lambden, .
and S. Graham, Deputy Clerk.
- A084966 SSW, Inc.
v.
The City of Lafayette
Cause called and argued by David J. Bowie, counsel for appellant and
Charles J. Williams, counsel for respondent. Cause ordered submitted.
- A085802 First Nationwide Bank, et al.
v.
Mountain Cascade, Inc.
Cause called and argued by George Knopfler, counsel for appellant. No
appearance was made on behalf of respondent. Cause ordered submitted.
- At this point in the proceedings, Presiding Justice Kline left the bench and
Justice Ruvolo joined the bench.
- A086934 Monique Danielle Miles
v.
County of Alameda
Cause called and argued by Gregory J. Sowder, counsel for appellant and
Kristen Thorness, counsel for respondent. Cause ordered submitted.
- A084831 Brian Bjork
v.

David Mason

Cause called and argued telephonically by Mark Clausen, counsel for appellant and in person by Karen M. Houston, counsel for respondent. Cause ordered submitted.

A086197

Carol Mardeusz

v.

Leo Magers

Cause called and argued telephonically by Carol Mardeusz, appellant in propria persona and Catherine Ann Conner, counsel for respondent. Cause ordered submitted.

Court adjourned.

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Thursday, November 18, 1999

Division One

A085239 -- The People v. Jimmy Dean Lee.

We remand the matter to the trial court for the limited purpose of recalculating the presentence conduct credits to which appellant is entitled under Penal Code section 4019. We affirm the judgment in all other respects. Strankman, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

Division Two

A084470 -- Bergen Brunswick Drug Company v. Barbara Sloban.

We affirm the judgment awarding Furth \$426,101.25 in attorney fees and \$6,104.20 in other costs and disbursements as assignees of Barbara. Furth shall also recover fee costs incurred on appeal. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

A083628 -- Leonel Marquez et al., v. City of Oakland.

The judgment of the trial court is reversed. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

A084580 -- Rachel Ann Johnson v. Frank Feger.

The judgment is reversed, and the case is remanded for a new trial. At the new trial instructions are to be given consistent with this opinion. Johnson is awarded costs. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Thursday, November 18, 1999 (continued)

A084668 -- Patrick Price v. Salomon Smith Barney et al.

The order denying the motion to compel arbitration is affirmed. Lambden, J. We Concur: Haerle, Acting P.J. Ruvolo, J. (Not for Publication.)

A086108 -- The People v. Darvin D. Heath.

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

A085634 -- John Lee, as Trustee etc., v. William M. Johnson, Jr.

The judgment is affirmed; appellant to pay costs on appeal. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

Division Four

A078848 -- Douglas E. Hines, Jr., v. California Department of Corrections et al.

The judgment is affirmed with costs to respondents. Hanlon, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

Division Five

A085563 -- Patricia E. Gladwill v. Harold Raymond Robinson.

We affirm the judgment. Gladwill's motion for sanctions and attorney fees is denied. Jones, P.J. We Concur: Haning, J., Stevens, J. (Not for Publication.)

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

DIVISION FIVE

Thursday November 18, 1999

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Jones, P.J.; Haning, J., Stevens, J.; and Hanlon, P. J. of Division Four on assignment by order of The Chief Justice* and Richard H. Sandvik Deputy Clerk.

A086538 Inntel Communications, Inc.

v.

Firmaterr, Inc.

Cause called and argued by Myron Moskovitz, counsel for appellant and by Douglas J. Haycock, counsel for respondent. Cause ordered submitted.

A082950* Canal Street LTD., et al.

v.

Robert A. Sorich et al.

Cause called and argued by Jeffrey S. Lawson, counsel for appellant, and by John J. Hartford, counsel for respondent. Cause ordered submitted.

A086358 City and County of San Francisco

v.

San Francisco Assessment Appeals Board No. 1

Pier 39 Limited Partnership

Cause called and argued by Mark L. Mosley, counsel for appellant and by Thomas H. Steele, counsel for respondent. Cause ordered submitted.

A086244 Steve Chevelle

v.

Regis Contractors

Cause called and argued by Richard Gregg, counsel for appellant and by Rodrigo E. Salas, counsel for respondent. Cause ordered submitted.

A086190 In re the Estate of Ernest M. Mangold

Juan Bautista Rivera

v.

Justin L. Greene et al.

Cause called and argued by Juan Bautista Rivera, appellant in pro per, and by Donald P. Stephenson, counsel for respondent. Cause ordered submitted.

A085550 In re the Estate of Clarence G. Lahey
Frances Lahey
v.
Dorothy Bianchi
Cause called and argued by Edward W. Suman, counsel for appellant, and by
Richard A. Canatella, counsel for respondent. Cause ordered submitted.

A085169 Steve Zuffi
v.
John Raffo, Jr.
Cause call and argued by Eric E. Silva, counsel for appellant and by Robin
Y. Trembath, counsel for respondent. Cause ordered submitted.

A083696 The People
v.
LaFrance David Beal
Cause called and argued by Philip M. Brooks, counsel for appellant and by
Amy Haddix, Deputy Attorney General, counsel for respondent. Cause
ordered submitted.

Court recessed at 12:03 p.m.

Court reconvened at 1:00 p.m.

A087933 In re Paul Joseph Martinez on Habeas Corpus
A084183 The People
v.
Paul Joseph Martinez
Cause called and argued by Barry M. Karl, counsel for appellant and by
Jeffrey M. Laurence, Deputy Attorney General, counsel for respondent.
Cause ordered submitted.

A085523 The People
v.
Kenneth Wayne Lofton
Cause called and argued by Joan Ann Isserlis, counsel for appellant and by
Mark S. Howell, Deputy Attorney General, counsel for respondent. Cause
ordered submitted.

A085201 In re Nicolas L., a minor.
The People
v.

Nicolas L.

Cause called and argued by Valerie C. West, counsel for appellant and by Aileen Bunney, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A086702 In re Henry P., a minor.

The People

v.

Henry P.

Cause called and argued by Jonathan D. Soglin, counsel for appellant and by David D. Salmon, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A086176 In re Anthony J., a minor.

Social Services Agency

v.

Heather G.

Cause called and argued by Frank H. Free, counsel for appellant and by Anthony E. Scarr, Deputy County Counsel, counsel for respondent. Cause ordered submitted.

Court adjourned at 2:25 p.m.

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Friday, November 19, 1999

Division One

A088408 -- Marla Hollander, et al., v Edith Spark Hollander.

By the Court: The motion filed November 1, 1999 to vacate this court's dismissal order filed October 26, 1999 and reinstate the above-captioned appeal to active status is granted. The clerk of this court is directed to file the docketing statement that was submitted with said motion. Marchiano, Acting P.J.

Division Two

A088881 -- Gary Hirsch, et al., v. The Superior Court of San Mateo County; Judy Chow, R.P.I.

By the Court: The petition for writ of mandate/prohibition/certiorari/stay is denied. Kline, P.J.

A086199 -- In re David T., a Person Coming Under the Juvenile Court Law.

Accordingly, our independent review of the record leads us to affirm the judgment. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

Division Three

A084882 -- Jim Farn Chew et al., v. Fred Lau et al.

The judgment denying the writ petition is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

Friday, November 19, 1999 (continued)

A085311 -- The People v. Robert H. Cole.

The petition is denied. Corrigan, J. We Concur: McGuinness, P.J., Parrilli, J. (Not for Publication.)

A083689 -- Michelle Engel et al., v. Pacific Gas and Electric Company.

The judgment is affirmed. Appellants are to bear the costs of appeal. McGuinness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

A084247 -- The People v. Ethan Kent Sedgwick

Affirmed. Walker, J. We Concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication.)

A083348 -- The People v. Daniel James Myers.

The conviction for attempted simple kidnapping (count 6) is reversed. The case is remanded to the trial court to amend the abstract of judgment to correct the errors the People have conceded as described in the preceding paragraph. In all other respects, the judgment is affirmed. Parrilli, J. We Concur: Corrigan, Acting P.J., Walker, J. (Not for Publication.)

A082488 -- The People v. Ricky John Paysinger.

A085081 -- In re Ricky John Paysinger, on Habeas Corpus.

The judgment is affirmed. McGuinness, P.J. We Concur: Corrigan, J., Walker, J. (Not for Publication.)

A085540 -- Mario E. Falco v. Craig Ragg et al.

The judgment is affirmed. Jones, P.J. We Concur: Haning, J., Stevens, J. (Not for Publication.)

Friday, November 19, 1999 (continued)

Division Four

A086046 -- The People v. Richard Allen Felt.

The judgment is affirmed. Sepulveda, J. We Concur: Hanlon, P.J., Reardon, J. (Not for Publication.)

Division Five

A088330 -- Kelie Ann Gray v. The Superior Court of Contra Costa County; Contra Costa County Social Services Department, R.P.I.

The petition for extraordinary writ review and request for stay are denied on their merits. (Cal. Const., art. VI, § 14; rule 39.1B (*o*); *Kowis v. Howard* (1992) 3 Cal.4th 888, 894.) Petitioner is barred in any subsequent appeal from making further challenges to the orders terminating reunification services and setting a hearing under section 366.26. (§ 366.26, subd. (*l*).) Stevens, J. We Concur: Jones, P.J., Haning, J. (Not for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Monday, November 22, 1999

Division One

A087076 -- The People v. Charles James Schwarm.

The judgment is affirmed. Strankman, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

A086862 -- The People v. James Hilliard.

The judgment is affirmed. Stein, J. We Concur: Strankman, P.J., Marchiano, J. (Not for Publication.)

Division Two

A084797 -- The People v. LaVerne C. Simmons.

No violation of federal or state law is shown. The motion to dismiss was properly denied, and the judgment is accordingly affirmed. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

A082608 -- Franz Koller v. James Paul Green et al.

The judgment is reversed, and the cause remanded for further proceedings consistent with this opinion. Each party shall bear its own costs on appeal. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Not for Publication.)

A083034 -- Joseph N.Y. Tsu et al., v. John A. Vos et al.

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Monday, November 22, 1999 (continued)

Division Four

A085444 -- The People v. William Thomas Rice.

The judgment of conviction is affirmed. Poché Acting P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

A086860 -- The People v. Gregory Bryce Strand.

Accordingly, the judgment is reversed. Hanlon, P.J. We Concur: Poché J., Reardon, J. (Not for Publication.)

Division Five

A086234 -- Consumer Justice Foundation, etc., v. La Petite Academy, Inc., et al.

We affirm the judgment. Jones, P.J. We Concur: Haning, J., Stevens, J. (Not for Publication.)

A084877 -- In re Chad B., a Person Coming Under the Juvenile Court Law.

The orders of the juvenile court are affirmed. Stevens, J. We Concur: Jones, P.J., Haning, J. (Not for Publication.)

A084757 -- The People v. Gary Dale Mosbarger.

The judgment of conviction is affirmed. Stevens, J. We Concur: Jones, P.J., Haning, J. (Not for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Tuesday, November 23, 1999

Division One

A083194 -- The People v. Mango Watts.

The judgment is affirmed. Stein, J. We Concur: Strankman, P.J., Marchiano, J. (Not for Publication.)

Division Two

A086057 -- The People v. Reginald Dennis Scott.

The judgment is reversed and the case is remanded to the trial court for proceedings not inconsistent with this opinion. Haerle, J. We Concur: Kline, P.J., Ruvolo, J. (Certified for Publication.)

A081869 -- The People v. Vernon M. James.

A086304 -- In re Vernon M. James, on Habeas Corpus

The judgment is affirmed. The petition for writ of habeas corpus is denied. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

A087582 -- In re Sadie G., a Person Coming Under the Juvenile Court Law.

The orders adjudicating appellant a ward of the court pursuant to Welfare and Institutions Code section 602 and placing her on probation in foster care are affirmed. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

A089142 -- Robert Charles St. Jovite v. The Superior Court of Marin County; The People of the State of California, R.P.I.

By the Court: The petition for writ of mandate/prohibition/stay is denied. Kline, P.J.

Tuesday November 23, 1999 (continued)

A086934 -- Monique Daniel Miles v. County of Alameda.

Appellant has failed to state a claim for negligence in that she has failed to allege a basis for a duty of confidentiality. She has also failed to avoid the immunity provisions of Government Code sections 820.2 and 820.8. In view of the number of previous chances given appellant to amend, we find no abuse of the court's discretion in denying leave to amend. Accordingly, the order of dismissal is affirmed. Lambden, J. We Concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)

Division Four

A080068;A081457 -- John S. Foggy v. First American Title Insurance Company et al.

The judgment in favor of First American and Ronson is reversed. The judgment for Goldworthy and Peck on the negligence cause of action is affirmed; the balance of that judgment is reversed. The orders for payment of attorney's fees are reversed. Appellant shall recover his costs on appeal. Hanlon, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

A084204 -- The People v. Dewayne Anthony Jiles.

Judgment affirmed. Reardon, J. We Concur: Poché Acting P.J., Sepulveda, J. (Not for Publication.)

A084795 -- The People v. Jamal J. Thomas.

For all the foregoing reasons, the judgment of the trial court, including the sentence imposed, is affirmed in its entirety. Sepulveda, J. I concur: Reardon, J. (See Dissenting Opinion of Poché Acting P.J.) (Not for Publication.)

Division Five

A085276 -- Cynthia M. Judy v. Jeffrey T. McDonagh.

The judgment is affirmed. Jones, P.J. We Concur: Haning, J., Stevens, J. (Not for Publication.)

Tuesday, November 23, 1999 (continued)

A084905 -- Renee Fields v. Norcal Waste Systems, Inc., et al.

The order denying relief under section 473 is reversed, and the matter is remanded for further proceedings in accordance with the views expressed herein. Haning, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

A083879 -- Thomas Havstad et al., v. Sheila Gropper Nelson.

The judgment is reversed. Costs are awarded to appellant. Stevens, J. We Concur: Jones, P.J., Haning, J. (Not for Publication.)

A082651/A082815 -- Christine Collins v. Exxon Corporation.

The judgment of nonsuit on appellant's cause of action based on negligent hiring and the order awarding costs are reversed. The judgment is otherwise affirmed. The matter is remanded for further proceedings consistent with this opinion. The parties to bear their own costs on appeal. Haning, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Wednesday, November 24, 1999

Division One

A086416 -- The People v. John Wayne Robinson.

The judgment is affirmed. Strankman, P.J. We Concur: Stein, J.,
Marchiano, J

**A085203 -- In re Mauryea A., a Person Coming Under the Juvenile
Court Law.**

The judgment is affirmed. Stein, J. We Concur: Strankman, P.J., Swager,
J. (Not for Publication.)

Division Two

A085778 -- The People v. Duane Treell Johnson.

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Ruvolo, J.
(Not for Publication.)

**A089114 -- Speck Cab Company, Inc. v The Superior Court of San
Francisco County; Gregory J. Roden, R.P.I.**

By the Court: The petition for writ of mandate is denied without prejudice
as premature in that no written order has been signed by the trial court in
compliance with Code of Civil Procedure section 437c, subdivision (g). (See *Tera
Pharmaceuticals, Inc. v. Superior Court* (1985) 170 Cal.App.3d 530, 532;
Continental Insurance Corrigan, J. v. Superior Court (1985) 165 Cal.App.3d
1069, 1071-1072; *Young v. Superior Court* (1986) 179 Cal.App.3d 28.) Kline, P.J.

Wednesday, November 24, 1999 (continued)

A089011 -- Duke K. Bolter v. The Superior Court of Del Norte County; The People of the State of California, R.P.I.

By the Court: The petition for writ of mandate/stay is denied. Kline, P.J.

Division Three

A084555 -- In re Marriage of Jane O. Rising and David W. Rising.

Order Modifying Opinion and Denying Rehearing [No Change in Judgment] By the Court: It is ordered that the opinion filed herein on October 27, 1999 be modified in the following particular (SEE ORDER) As so modified, the opinion is ordered published in the official reports. McGuiness, P.J. (Certified for Publication.)

A085144 -- Michael Eisenberg v. Fortune financial et al.

The judgment is affirmed. Respondents shall recover their costs on appeal. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

A083421 -- The People v. Daniel Wayne Bryant, Jr.

A087613 -- In re Daniel Wayne Bryant, Jr., on Habeas Corpus

Bryant failed to discharge his burden of showing that counsel acted incompetently, and that, absent counsel's alleged missteps, a more favorable result was reasonably probable. (See *Strickland*, *supra*, 466 U.S. at p. 689; *Scott*, *supra*, 15 Cal.4th at p. 1211; *In re Avena*, *supra*, 12 Cal.4th at p. 721.) We affirm Bryant's conviction and deny his petition for writ of habeas corpus. Walker, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

A084590 -- Albert Valle v. Steven A. Schectman et al.

We affirm and award costs to Schectman. Walker, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

A084980 -- Richard J. Gienger v. California Department of Forestry and Fire Protection et al; Pacific Lumber Company, R.P.I.

Affirmed. Walker, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

Wednesday, November 24, 1999 (Continued)

A084205 -- Lisa S. Mac, as Administrator, etc., v. Bank of America et al.

The judgment is reversed. Mac shall recover her costs on appeal. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Certified for Publication.)

A086512 -- Estate of Marjorie Page. Deceased. Rosemary A. Matzke v. State of California et al.

The order appealed from is affirmed and the matter remanded to the trial court for further proceedings. Corrigan, Acting P.J. We Concur: Parrilli, J., Walker, J. Corrigan, J. (Not for Publication.)

A085017 -- Osmonics, Inc., et al., v. Whatman PLC, et al.

The trial court's order is reversed. Osmonics shall recover its costs on appeal. Parrilli, J. We Concur: McGuiness, P.J., Walker, J. (Not for Publication.)

A081815 -- American Motorists Insurance Company v. Fleming Companies, Inc.

The summary adjudication in favor of respondent Fleming is reversed. The cause is remanded for entry of judgment in favor of American Motorists. Corrigan, Acting P.J. We Concur: Parrilli, J., Walker, J. (Not for Publication.)

Division Five

A084563 -- Civil Service Employees Insurance Company, v. William Day et al.

We affirm the judgment. Jones, P.J. We Concur: Haning, J., Stevens, J. (Not for Publication.)

A086702 -- In re Henry P., a Person Coming Under the Juvenile Court Law.

The orders of the juvenile court are affirmed. Stevens, J. We Concur: Jones, P.J., Haning, J. (Not for Publication.)

Wednesday, November 24, 1999 (continued)

A085055 -- The People v. Danny Williams.

The trial court shall prepare and forward to the Department of Corrections an amended abstract of judgment showing that sentence on counts 2, 3 and 4 is stayed pursuant to section 654. The judgment is otherwise affirmed. Haning, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

A087027 -- The People v. Pablo Beltran Villalbos.

The judgment is affirmed. Stevens, J. We Concur: Jones, P.J., Haning, J. (Not for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Monday, November 29, 1999

A084420 -- The People v. Richard Zurawski.

The judgment is affirmed. Marchiano, J We Concur: Stein, Acting P.J.,
Swager, J. (Not for Publication.)

A086043 -- The People v. Thomas Eugene Blake, Sr.

The judgment is affirmed. Marchiano, J We Concur: Strankman, P.J.,
Swager, J. (Not for Publication.)

A085451 -- The People v. Arturo Reyes Molina.

The judgment is affirmed. Strankman, P.J. We Concur: Stein, J.,
Marchiano, J (Not for Publication.)

**A087114 -- In re Gerald H., a Person Coming Under the Juvenile
Court Law.**

The judgment is affirmed. Marchiano, J We Concur: Strankman, P.J.,
Swager, J. (Not for Publication.)

**A083225 -- In re Rafael E., a Person Coming Under the Juvenile Court
Law.**

The CYA commitment order is modified only to the extent that the eight-month sentence imposed for the false imprisonment of Joanna S. is hereby stayed pursuant to Penal Code section 654. The juvenile court is directed to prepare an amended CYA commitment order to reflect this modification. As modified, the jurisdictional and dispositional orders are affirmed. Marchiano, J We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

Monday, November 29, 1999 (continued)

Division Two

A081327 -- Marin County Club v. Bank of San Francisco, et al.

By the Court: The petition for rehearing is denied. Kline, P.J.

A083456 -- Marsha Mather, et al, v. Cornelius Shepard, et al.

The petition for rehearing is denied. Kline, P.J.

Division Three

A085465 -- David Shore v. Fenty Kaliman et al.

The judgment is reversed. The trial court is directed to vacate the order sustaining the demurrer and enter an order transferring the case to San Mateo County pursuant to Code of Civil Procedure section 396. Shore shall recover his costs on appeal. Parrilli, J. We Concur: McGuiness, P.J., Walker, J. (Not for Publication.)

A084764 -- The People v. Nathaniel Charles Harriel.

We reverse the order denying appellant's motion to suppress evidence and remand for further proceedings. Walker, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

A084960 -- Forest Glen Associates et al., v. Douglas S. McGlashan et al.

The judgment is affirmed. Appellant's request for an award of costs on appeal is denied and costs are awarded to respondents pursuant to California Rules of Court, rule 26(a). Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

A084731 -- Edwin O. Kelsey v. Waste management of Alameda County, et al.

Reversed. Kelsey shall receive costs on appeal. Walker, J. We Concur: McGuiness, P.J., Corrigan, J. (Certified for Publication.)

Monday, November 29, 1999 (continued)

A083876 -- Kevin Hernandez v. R.W. Thayer Food Products, Inc., et al.

The judgment is ordered vacated and the matter is remanded for a new trial on all issues other than the amount of damages. Appellants to recover costs on appeal. Walker, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

A086024 -- Donna Henderson, individually and as Guardian ad litem, etc., v. Erwin B. Fuller.

The judgment is affirmed. In the interests of justice, parties to bear their own costs of appeal. McGuiness, P.J. We Concur: Parrilli, J., Walker, J. (Not for Publication.)

A085814 -- In re Isiah H., a Person Coming Under the Juvenile Court Law.

The judgment is affirmed. Corrigan, Acting P.J. We Concur: Parrilli, J., Walker, J. (Not for Publication.)

A086750 -- Edna Luck Miller v. Solita P. Lardizabal et al.

The judgment in favor of Lardizabal and the ACC is reversed. McGuiness, P.J. We Concur: Parrilli, J., Walker, J. (Not for Publication.)

Division Four

A083943 -- Karen Schortemeyer v. Chevron, U.S.A., Inc., et al.

The judgment is affirmed. Poché J. We Concur: Hanlon, P.J., Sepulveda, J. (Not for Publication.)

A081330 --Al Deschene v. Point Steel Company.

Order Modifying Opinion. The Court: It is ordered that the opinion filed herein on November 3, 1999, be modified in the following particulars: (SEE ORDER) We reverse the judgment of dismissal as to plaintiff's claims of wrongful termination in violation of public policy and of discrimination on the basis of health and in retaliation for giving deposition testimony. This

modification does not effect a change in the judgment. Hanlon, P.J. (Certified for Publication.)

Monday, November 29, 1999 (continued)

A086662 -- In re David B., a Person Coming Under the Juvenile Court Law.

The judgment is affirmed. Sepulveda, J. We Concur: Hanlon, P.J., Poché J. (Not for Publication.)

A085915 -- Robin S. Kuykendall v. Karlton K. Keller.

The order appealed from is affirmed. Sepulveda, J. We Concur: Hanlon, P.J., Reardon, J. (Not for Publication.)

A085921 -- Lust Management et al., v. California Underground Storage Tank Cleanup Fund.

For all the foregoing reasons, the order of the trial court denying appellant's motion for attorney fees is affirmed. Respondent shall recover its costs on appeal. Sepulveda, J. We Concur: Poché Acting P.J.; Reardon, J. (Not for Publication.)

Division Five

A085523 -- The People v. Kenneth Wayne Lofton.

The appeal is dismissed. Stevens, J. We Concur: Jones, P.J., Haning, J. (Not for Publication.)

A086538 -- Inntel Communications, Inc., v. Firmaterr, Inc.

The judgment following the court trial is affirmed. Stevens, J. We Concur: Jones, P.J., Haning, J. (Not for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Tuesday, November 30, 1999

Division One

A084873 -- Richard Parker v. Pittsburgh Corning Corporation.

The judgment is affirmed. Marchiano, J. Strankman, P.J., Stein, J. (Not for Publication.)

Division Two

A085753 -- In re Christian C. et al., a Person Coming Under the Juvenile Court Law.

The appeal is dismissed as moot. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

A084874 -- Robert S. Duncan v. Darrow M. Watt et al.

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

A083097 -- The People v. Robert Bruce Lamb.

The judgment is reversed and the guilty plea vacated. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Certified for Publication.)

A084201 -- The People v. Ace Hardware Corp. et al., Michael Dipirro.

The judgment is affirmed. DiPirro is to pay the People's costs and defendant respondents are to bear their own costs. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Tuesday, November 30, 1999 (continued)

Division Three

A080512 -- Yakov Gelfenbeyn v. Safeway, Incorporated.

The judgment is reversed, and the trial court is directed to vacate the portion of its order granting summary judgment in favor of Safeway on Gelfenbeyn's negligence cause of action. Each party shall bear its own costs on appeal. McGuiness, P.J. We Concur: Corrigan, J., Walker, J. (Not for Publication.)

A084696 -- In re Elmer R., a Person Coming Under the Juvenile Court Law.

We reverse the juvenile court's commitment order to the extent that it imposes a one-year enhancement for being personally armed with a gun under section 12022, subdivision (a)(1), consecutively to the term for the assault, and remand for the court to strike the enhancement. On remand, the court shall also amend the commitment order to reflect an eight-month consecutive term for possessing marijuana for sale. We reverse the consecutive terms for possessing a firearm, possessing a concealable firearm, and brandishing a firearm, and remand for the court to stay imposition of those terms. In all other respects we affirm the juvenile court judgment. Walker, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

A085199 -- In re Phillip W., a Person Coming Under the Juvenile Court Law.

On this record, we conclude the trial court's decision was supported by substantial evidence there was no longer any real or reasonably apparent danger to appellant at the time he attacked Harley on the ground and began to beat him in the face and head with his fists. The judgment is affirmed. McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

A086530 -- In re Nicolas Jimenez on Habeas Corpus

Based on the evidentiary record and the uncontradicted declarations, we conclude petitioner's counsel failed to render effective assistance of counsel. The petition for writ of habeas corpus is granted. The judgment of conviction is reversed and the case is remanded to the trial court to allow petitioner to withdraw his nolo contendere plea. McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

Tuesday, November 30, 1999 (continued)

A086534 -- The People v. Thomas Leon Mayfield.

The trial court's order revoking defendant's probation is affirmed.
McGuiness, P.J. We Concur: Corrigan, J., Walker, J. (Not for Publication.)

Division Four

A083621 -- In re Andrew G., a Person Coming Under the Juvenile Court Law.

The order is affirmed. Hanlon, P.J. We Concur: Reardon, J., Sepulveda, J.
(Not for Publication.)

A083840 -- The People v. Robert Roger Runninghawk.

The judgment is affirmed. Hanlon, P.J. We Concur: Reardon, J.,
Sepulveda, J. (Not for Publication.)

A084591 -- Laurie Guy Messerschmidt v. Ramona Albright.

The order denying Albright's motion to disqualify attorney Berko is
affirmed. Poché J. We Concur: Hanlon, P.J., Reardon, J. (Not for Publication.)

A084572, A085543 -- Audrey Lytle v. Berkeley Unified School District et al.

The purported appeal from the order denying the new trial motion is
dismissed. The order denying the motion for judgment NOV is affirmed. The
order on attorney fees and costs is reversed, and the matter is remanded to the trial
court with directions to award plaintiff reasonable attorney fees. Plaintiff shall
recover her costs on these appeals. Poché J. We Concur: Hanlon, P.J.,
Sepulveda, J. (Not for Publication.)

Tuesday, November 30, 1999 (continued)

Division Five

A086439 -- In re Monica M., a Person Coming Under the Juvenile Court Law.

The judgment is affirmed. Jones, P.J. We Concur: Haning, J., Stevens, J. (Not for Publication.)

A083568, A083569 -- The People v. William Charles Carnell.

The judgment is reversed and the matter remanded to the superior court with directions to resentence appellant in accordance with the views expressed herein. The judgment is otherwise affirmed. Haning, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

A085169 -- Steve Zuffi v. John Raffo, Jr., et al.

The judgment of dismissal is affirmed. Stevens, J. We Concur: Jones, P.J., Haning, J. (Not for Publication.)

